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IN THE

Supreme Court of the United States

October Term, 1946.

No. 514.

THE UNITED STATES OF AMERICA,

v.

MARIA R. LAURO, as Administratrix of the Goods, Chattels and Credits of PETER LAURO, Deceased.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Memorandum for Maria R. Lauro, as Administratrix of the Goods, Chattels and Credits of Peter Lauro, Deceased.

JACOB RASSNER,
Proctor for Maria R. Lauro.

November, 1946.

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Memorandum for Maria R. Lauro, as Administratrix of the Goods, Chattels and Credits of Peter Lauro, Deceased.

Opinion Below.

The opinion of the District Court is reported in 63 F. Supp. 538. The United States Circuit Court of Appeals for the Second Circuit has rendered no opinion.

Jurisdiction.

The certificate of the United States Circuit Court of Appeals for the Second Circuit was filed September 17, 1946. The jurisdiction of this Court is invoked under Section 239 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 346).

Question Presented.

The question certified by the court below is as follows:

> Does the word "damages" as it appears in the following sentence of the Public Vessels Act of 1925; 46 U. S. C. sec. 781:
>
> > "A libel *in personam* in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: Provided, That the cause of action arose after the 6th day of April, 1920".
>
> mean damages to property only, or does it mean, as well, damages under Sections 130 to 134 of the Decedent Estate Law of the State of New York recoverable by a personal representative because of the death of a human being?

Statute Involved.

So far as pertinent, the statute involved is set forth in the question certified.

Statement of Facts.

On May 27, 1943, Peter Lauro died as a result of injuries suffered by him on May 26, 1943, while he was employed by Marra Bros., contracting stevedores, on board respondent's vessel, designated as No. 596, which vessel was docked at Pier 4, Staten Island, New York. The death was caused by personal injuries suffered by Lauro when he fell from a hatch cover on the vessel's main deck into the hold. At the time of the accident, the vessel, No. 596, was owned by the United States of America, respond-

ent, and had been allocated by the respondent to the United States Army. It was being loaded with cargo which was owned by the United States, and which consisted of Army and Navy property and Lend-Lease material which was being shipped to North Africa. Marra Bros., the employer of the deceased, was hired by the United States Army to load the vessel.

Thereafter, Lauro's widow filed a libel in the United States District Court for the Eastern District of New York against United States of America to recover damages under the Public Vessels Act of 1925; 46 U. S. C. Section 781, for wrongfully causing Lauro's death. In this proceeding the District Court rendered a decree awarding damages to the libelant in the sum of $25,000. From this decree an appeal was taken to this court, and the cause came on for argument on March 12, 1946. On this appeal, the respondent-appellant contended that the said Public Vessels Act of 1925 provided a remedy against the United States for damage to property only, but not for damage to a person or damage arising by reason of the death of a human being.

Discussion.

The action was instituted under both the Suits in Admiralty Act, 46 U. S. C. A. Secs. 741, 752 and Public Vessels Act, 46 U. S. C. A., Secs. 781, 790, however, the question certified deals solely with the interpretation and applicability of the Public Vessels Act, as to whether a cause of action for damages may be maintained thereunder.

It would seem that the essence of this question has already been dealt with at length by this Court in the case of *Canadian Aviator, Ltd.* v. *United States*, 324 U. S. 215. In said case, this Court stated in substance that liability is not restricted to property damage only, but extends to damage to persons, as appears on page 224:

> "The consent to suit embodied in the Act thus extends to cases where the negligence of the personnel of a public vessel in the operation of the vessel causes damage to other ships, their cargoes, and personnel * * *."

It being the well settled law that a private shipowner is liable for his wrongful act, which results in personal injury or death, then on the authority of the *Canadian* case, *supra*, the same liability is imposed on the United States by the Public Vessels Act.

Such is the holding of this Court in the *Canadian* case, *supra*, on page 228:

> "* * * we hold that the Public Vessels Act was intended to impose on the United States the same liability (apart from seizure or arrest under a libel *in rem*) as is imposed by the admiralty law on the private shipowner, * * *"

Customary legal terminology of the word "damages" since the early English cases up to the present time, has always included loss suffered by wrongful death or physical injury to the person.

The British Courts which did not allow recovery for personal injuries, unless there was physical contact with the person by the vessel or its appurtenances, nevertheless universally recognized that "damages" included injuries to the person and wrongful death.

See:

> *Maritime Conventions Act, 1911* Section 5 (1 & 2 Geo. V. c. 57).

This Act permits actions for wrongful death as a cause of action for damages. See also:

> *The Kwasind* (1915), 84 L. J. P. 102.

Although prior to the aforesaid Maritime Conventions Act, a distinction was drawn between causes for personal injury and wrongful death, nevertheless the Courts recognized that the word "damages" included both. See:

The Vera Cruz (1884). L. R. 9 P. 96, affirmed (1884) L. R. 10 A. C. 59.

The New York Death Statute is substantially the same as the Lord Campbell's Act (Aug. 26, 1846). Statutes at Large, Vol. 86, 9 and 10 Victoriae, page 531, which speaks of wrongful death as "damages".

Some of the cases in which the British Courts have recognized that the word "damages" includes injuries to the person are as follows:

The Sylph (1867) L. R. 2 Adm. & Ecl. 24;
The Beta (1869) L. R. 2 P. C. 447;
Wyman v. *The Duart Castle* (1899) 6 Ex. C. R. 387;
The Theta (1894) P. 280;
Mulvey v. *The Neosho* (1919) 19 Ex. C. R. 1.

The Lower Courts, both the First and Second Circuit Courts of Appeal have held that the Public Vessels Act authorizes suits predicated on injuries to the person. See:

New England Maritime Co. v. *United States*, 55 F. 2d 674, 685 (C. C. A. 1);
Porello v. *United States of America*, 153 F. 2d 605 (C. C. A. 2).

When House Bill 9535, which became Public Vessels Act, was up for consideration by the Senate, the Senate was informed by Senator Bayard that the purpose of said Bill was to give:

"a person aggrieved because of an accident by reason of the shortcoming of a United States ship the right to go into the district court and prosecute his action * * *."

See:

Senate Congressional Record, February 12, 1925, page 3560.

A woman, who through the negligence of a United States ship, is left a widow with six children, five of whom are infants, the youngest but six years of age, is such a "person aggrieved" as Congress clearly intended to protect by enacting the Public Vessels Act.

When a person, engaged in maritime service, helping to load a vessel in navigable waters of the United States of America, is caused through the fault of the vessel, to skid on a greasy hatch cover and his foot to strike against a broken hatch cover handhold, which instead of being flush with or sunken below the surface of the hatch cover, extends above the hatch cover in such a manner as to trip a person properly working thereon, he is such a person who has met with a maritime accident under such circumstances as coming clearly within the Act as explained by Senator Bayard to Congress? The Act intended to include "all maritime accidents of any kind * * *."

It would seem that the language of the Act clearly shows the intent of Congress to give redress to all persons aggrieved by all maritime accidents, and that therefore reference to legislative history is unnecessary, nevertheless it is interesting to note that Bills which proposed to limit the Act, to causes of action for property damage resulting from collision were invariably rejected by Congress and were acceptable only after the proposed Bill was written to include all actions "for damages caused by a public vessel." See:

Hearings before House of Judiciary Committee; H. R. 9075, 68 Cong., 1st Sess., May 21, 1924;
H. R. 13591, 66th Cong., 2d Sess., February 2, 1921.

The fact that Congress enacted special Acts for the redress of several personal injury claimants, after the enactment of the Public Vessels Act, is clearly understandable, for in some of the claims against the public vessels, no negligence was involved, in others, there was doubt as to whether or not the claims might be considered as similar to those of claims by members of the crew against their own vessel, or the absence of physical contact by the vessel with the injured person. The allowance of such claims did not nullify the Public Vessels Act. Furthermore, this Court had not spoken on this question theretofore as it subsequently did in the *Canadian* case, *supra*, clearly eliminating any doubt as to the question of physical contact by the vessel being necessary. See:

O'Neal v. *United States*, 11 F. 2d 869, aff'd 11 F. 2d 871 (C. C. A. 2);
Dobson v. *United States*, 27 F. 2d 807 (C. C. A. 2).

Although recovery was not allowed by reason of the fact that a member of the crew could not maintain an action, predicated upon the fault of his own vessel, in said *O'Neal* and *Dobson* cases, *supra*, as well as in the recent case of *Bradey* v. *United States*, 151 Fed. 2d 742, c. d. 326 U. S. 795, rehearing denied June 3, 1946, our Courts recognized the fact that the word "damages" included injuries to the person as well as wrongful death. See also:

United States v. *Marine* (C. C. A. 4) May 11, 1946, 155 Fed. 2d 456;
Brady v. *Roosevelt Steamship Co.*, 317 U. S. 575;

New England Maritime Co. v. *United States, supra;*
Porello v. *United States of America, supra.*

Any doubt as to the Congressional intent to include suits for wrongful death or personal injuries against the United States under the Public Vessels Act, which doubt was probably the reason for the United States acquiescing to the petition for certiorari in the *Porello* case, *supra,* the granting of which petition by this Court was undoubtedly the reason for the Lower Court certifying to this Court, on September 11, 1946, the question now under consideration (the Lower Court having held theretofore, in the *Porello* case, *supra,* that the Public Vessels Act extended to suits for personal injuries against the United States) is entirely eliminated by the recent enactment by Congress of the *Federal Tort Claims Act,* Aug. 2, 1946, Public Law 601, ch. 753—Laws of 79th Congress, 2nd Session.

The Federal Tort Claims Act which authorizes suit for money damages for personal injury or death in addition to property damage, predicated on tort by an employee of the Government or Government agency, specifically exempts under subdivision (d) of "exceptions" a suit predicated on the Public Vessels Act, stating in substance, that the remedy for damages caused by wrongful death or personal injury is already provided for by the Public Vessels Act or the Suits in Admiralty Act.

Title IV—Federal Tort Claims Act

Exceptions

Sec. 421

(d) Any claim for which a remedy is provided by the Act of March 9, 1920 (U. S. C., title 46, secs. 741-752, inclusive), or the Act of March 3, 1925

(U. S. C., title 46, secs. 781-790, inclusive), relating to claims or suits in admiralty against the United States.

It would be incongruous to assume that Congress in enacting the Federal Tort Claims Act, which was for the purpose of giving redress to persons injured or the representatives of persons killed through the fault of Government employees or agencies, specifically refused to allow any redress to a person injured through the fault of a United States ship, when not protected by Federal Compensation or pension rights. The only logical interpretation is that Congress recognized the fact that the Suits in Admiralty Act (the application of which was in doubt during the war, as the Government took over all our merchant vessels which might then be considered *quasi* public ships) and the Public Vessels Act jointly, would provide adequate justice to a person aggrieved by reason of any and all maritime torts, not already provided for by any federal compensation act or federal pension rights.

It would seem that the ordinary legal terminology given to the word "damages" by both the English and American courts and its use by our Congress in enacting legislation for the protection of persons injured or the families of persons killed, clearly embraces loss suffered through wrongful death as recognized by Sections 130 to 134 of the Decedent Estate Law of the State of New York and comes squarely within the intent as well as the clear expression of Congress in enacting the Public Vessels Act, to extend the protection granted for damages, including wrongful death, by Government merchant vessels, to damages by public vessels.

The line of demarcation between the two is often so beclouded, uncertain and confusing, that justice can best be meted out, only by considering both statutes as being in *pari materia* and thus obviating the danger of a mis-

carriage of justice, through requiring proof as to the class of service the vessel is put to, merchant, public or *quasi* public, particularly where a merchant vessel is put to *quasi* public use as in the instant case. See:

U. S. v. *Caffey, Judge, et al.*, 141 Fed. (2d) 69;
State of Maine v. *U. S.*, 45 Fed. Supp. 35, 37.

The statute in question being remedial, should be liberally construed to give to the word "damages" as referred to in the statute, the generally accepted terminology of the word, so as to include an action for wrongful death.

See:

New England Maritime Co. v. *United States, supra;*
Porello v. *United States of America, supra;*
Bradey v. *United States, supra;*
Brady v. *Roosevelt Steamship Co., supra.*

Respectfully submitted,

JACOB RASSNER,
Proctor for Maria R. Lauro.

November, 1946.